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W.A.Nos.3358 & 3356 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	13.06.2024
PRONOUNCED ON :	10.07.2024

CORAM:

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

W.A.Nos.3356 & 3358 of 2023

R.Krishnan (Died)

- 1) K.Manimegalai
- 2) K.Premnath
- 3) K.Arivazhagan
- 4) K.Poonkuzhali
- 5) K.Kokilavani

... Appellants/Respondents 3 to 7
In both cases

Vs.

- 1) The Superintending Engineer,
Thiruvannamalai Electricity Distribution Circle,
Thiruvannamalai

... 1st respondent/ writ petitioner
In both cases

- 2) The Presiding Officer,
Additional I Labour Court,
Vellore District, Vellore.

..2nd Respondent/2nd respondent
In both cases

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent, against the order of His Lordship passed in W.P.Nos.29174 of 2016 & 8650 of 2014 dated 08.08.2023.

In both appeals:



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W.A.Nos.3358 & 3356 of 2023

For Appellants : Mr.T.Mohan, Senior Counsel
For Mr.S.N.Ravichandran

For R-1 : Mr.Anand Gopalan
For M/s.Agam Legal Advocates

* R2- Court

COMMON JUDGMENT

Per J.NISHA BANU, J.

Feeling aggrieved by the impugned order dated 08.08.2023 passed in W.P.Nos.29174 of 2016 & 8650 of 2014, by which, the learned Single Judge of this Court has allowed the said writ petitions preferred by the first respondent herein – TANGEDCO and has set aside the order passed by the Presiding Officer, Additional I Labour Court, Vellore District, Vellore under Section 33(C) (2) of the Industrial Disputes Act, the Respondents/appellants, who are the legal heirs of the deceased workman, have preferred the present appeal.

2. We have heard the learned counsel appearing on behalf of the respective parties at length. Thus everything this Court has heard boils down to these four questions:-

(i) Whether Labour Court has violated its jurisdiction under Section 33 (C) (2) of Industrial Disputes Act, by entertaining



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disputed questions and adjudicated upon the employer-employee relationship?

(ii) Whether service done as a temporary workmen/employee be considered as a qualifying service under Section 11 of Tamil Nadu Pension Act?

(iii) Whether the Respondent/Appellant herein has a pre-existing right as an employee under the Tamil Nadu Pension Act ?

3. At the outset, it is required to be noted that the deceased appellant / workman has filed an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, in C.P.No.215 of 2207 claiming monetary benefits for pension arrears of Rs.18,832/- and C.P.No.254 of 2013 praying to compute the monetary benefits towards the arrears of Pension totalling Rs.5,62,148/- from the respondent-TNEB.

4. The case of the deceased-appellant is that he was working with the respondent-TANGEDCO as 'Helper'. The respondent/TANGEDCO has nowhere denied the fact of the appellant being engaged as an employee. So it was not the case of the respondent that the appellant has not been an employee at all. Thus, the findings of the learned Single Judge that the Labour Court has misdirected itself and had allowed C.P.No.215/2007 on an erroneous



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appreciation of the materials placed before it, is wrong. There was never a dispute of employer-employee relationship. The Labour Court was right in entertaining the matter as there was no disputed questions and adjudication upon the employer-employee relationship.

5. As per Section 33(C)(2) of the Act, “Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33(C)(2) of the Act. The benefit sought to be enforced under Section 33(C)(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not.”

6. It is settled legal proposition of law that when there was no prior dispute on the issue of workman's right to receive the benefit from the employer, nothing more needs to be done and the labour court can proceed to compute the value of the benefit in terms of money. Therefore, the Labour



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court has rightly proceeded further with the application under Section 33 (C)

(2) of the Industrial Disputes Act. Therefore, the order passed by Labour Court is within its jurisdiction and not violative of Section 33 (C) (2) of the Industrial Disputes Act. However, the learned Single Judge has not appreciated the aforesaid facts and allowed the writ petitions filed by the TANGEDCO and set aside the orders of the labour court.

7. The qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is appointed either substantively or in an officiating or temporary service. The Appellant has served as a contract labourer to the junior engineer of the respondent herein, who had worked for 240 days in a period of 12 calendar months and shall be deemed to be a temporary workmen and at the board and, therefore, the workman having put in the said service, his service from 1980 to 1998 shall be treated as a temporary service which should be treated for the calculation of pension. But as per Rule 11 of the Tamil Nadu Pension Rules, the government servant retiring on or after October 1969 who is in regular pensionable service, temporary service, work charged service shall count in full as qualifying service even if it is not followed in confirmation. Now, considering the 18 years of service rendered by the Appellant, as per G.O.No.437, Finance



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(Pension) Department, Dated 23.06.1990, the period of service paid from

contingencies do not count as qualifying service for pension.

8. In the case on hand, workmen had joined the services on 03.03.1998 and prior to the said date, the order of absorption is dated 26.02.1998 and, therefore, for all the purposes, the regularization would start from 26.02.1998 and the calculation of service from the date, the workman has completed 10 years and would be entitled for pension, however the date of joining of the workman in the post would be the determinant date for counting the period of service. On 31.08.2007 the appellant has reached superannuation. From the period of joining the service as a regular workman till superannuation the workman has provided a continuous service of 9 years 5 months and 29 days. From 1980 to 2007 the workman is found to be working continuously under his employer.

9. Further going through the depths of the matter in hand, it is seen from the document that the petitioner has entered into service under the TANGEDCO board from 1980 to 1998 as a helper and took charge as a regular employee from 03.03.1998. It is an admitted fact that appellant workman was working with the respondent electricity board after absorption



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by Khalid Committee. His service is found to be continuous and perennial in nature. It is to be noted here that the respondents vide order dated 26.02.1988 has absorbed the appellant workman into regular service, though the appellant was not posted in his regular service. However, it is seen that the appellant has been posted to his regular service only through absorption made by Khalid Committee on 03.03.1998. The order of absorption was issued on 26.02.1998. Hence, considering the date of issuance of order, the appellant/workman had completed more than 10 years of service as a regular workman.

10. The Hon'ble Supreme Court, in the case of ***The State of Gujarat & ors vs Talsibhai Dhanjibhai Patel*** [Special Leave Appeal No. 1109 of 2022, dated 18.02.2022] has held as follows:

"It is unfortunate that the state continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The state cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.



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In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent, who has retired after rendering more than 30 years service".

Thus, considering the facts and circumstances of the case the services rendered by the appellant shall be considered as qualified service and the appellant is entitled for claiming the arrears of pension.

11. The Appellant herein has filed Industrial Disputes Claims under Section 33 C(2) of the Industrial Disputes act for arrears of pension, and the Labour court has rightfully provided the same for the part which he is entitled considering the period of service, for which period, he has been paid Provident fund and other benefits. Technically, the appellant herein will be qualified for pensionary benefits if he has provided 10 years of qualifying service. Thus, denying benefits on the same doesn't amount to proper justification.

12. The right to pensionary benefit is a fundamental right and as such cannot be taken away without proper justification as has been held in the case of *State Of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr.* Further, in the case of *Dr. Uma Agarwal vs. State of U.P.*, this Court held that, 'the



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grant of pensionary benefits is not a bounty, but a right of the employee, and

as such cannot be denied without proper justification'.

13. The appellant has been serving under temporary capacity from 1980 to 1998 and has been regularised by Khalid committee on 26.02.1998. Then, he joined the services as regular employee on 03.03.1998 and served till superannuation on 31.08.2007. The appellant herein has provided 37 years of continuous and perennial service to his employee. However, the qualifying period to be considered is from 03.03.1998 to 31.08.2007 i.e. 9 years 5 months 29 days. The appellant's service herein is falling short by 1 day to be considered under Rule 11 of the Tamil Nadu pension Scheme i.e. 10 years.

14. It is unreasonable and unjust that even though the appellant herein has served 37 years of service, he has been denied of pensionary benefits. If this courts fails to understand the same, it would miserably fail to meet the ends of justice. Thus, considering the above mentioned decisions of the Hon'ble Supreme Court and the facts and circumstances of the case, the appellant herein has a pre-existing right under the Tamil Nadu Pension Act.

15. Based on the above mentioned decisions, facts and circumstances of



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the case in hand, this court finds that the Appellant herein has provided the qualifying period of more than 10 years considering the continuous and perennial nature of work that the Electricity Board has provided and it would be grave injustice to deny the benefits to the appellant. However, the appellant has served continuously from 1980 to 02.03.1998 and 03.03.1998 to 31.08.2007 as temporary and regular workmen, However, the absorption happened on 26.02.1998 on paper while the workman was in continuous service. Thus, this court set asides the order of the Single Judge and this Court finds that the appellant is entitled to the pensionary benefits as computed by the Labour court. Accordingly, the Writ Appeals are allowed. The respondent-TANGEDCO is directed to pay the arrears of pension within 8 weeks from the date of receipt of a copy of this order. No costs.

Index : Yes / No
Internet : Yes
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(J.N.B,J.) (P.D.B, J.)
10.07.2024



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Common Judgment made in
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Dated:
10.07.2024